

ISSUE

May a judge serve as an election official?

ANSWER

No.

FACTS

Prior to recently being elected a part-time municipal judge, the judge served as an election official. He would like to continue to serve in future elections when he is not a candidate. The town clerk also would like the judge to work as an election official in future elections since it is difficult to find volunteers. The judge has never belonged to any political party. However, because political parties submit a list of their nominees to the clerk, the judge's name has been listed in the past by a political party as a nominee to the election board.

The judge would like to serve as an election official. He notes that since he is a municipal judge no disputes about the election process could come before him since such cases would be handled in a circuit court.

DISCUSSION

The issue presented is controlled by the Code of Judicial Conduct, SCR 60.05(3)(b).

SCR 60.05. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

SCR 60.05(3)(b) states:

A judge may not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may represent a county, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities and may serve on a governmental or private committee, commission or board concerned with

historical, educational or cultural activities. A judge may serve in any branch of military reserves and be called to duty in the active military.

An election board is a governmental commission under sec. 7.20, Stats. Additionally, an election official may be a polling place inspector under sec. 7.30(1) and (2), Stats., which is a governmental position. Also, as an election official, the judge could be called upon to make fact-finding decisions, and he could become a witness if there is a disputed election. SCR 60.05(3)(b) bars judges from these governmental activities.

CONCLUSION

In summary, we conclude that a judge cannot be an election official because he or she would be serving in a governmental position concerned with issues of fact on matters other than the improvement of law, the legal system or the administration of justice. Serving as an election official would violate SCR 60.05(3)(b).

APPLICABILITY

This opinion is advisory only. It is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee and is limited to questions arising under the Supreme Court Rules, Chapter 60 – Code of Judicial Conduct. This opinion is not binding on the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial disciplinary responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, Subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 05-2 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 1st day of August 2005.

/s/ George S. Curry

Honorable George S. Curry
Chair